

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

FRACTUS, S.A.,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD.;

et al.

Defendants.

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Civil Action No. 6:09-cv-00203

JURY TRIAL DEMANDED

**FRACTUS' OPPOSITION TO DEFENDANTS' MOTION TO EXPEDITE
CONSIDERATION OF DEFENDANTS' MOTION TO DE-DESIGNATE PLAINTIFF
FRACTUS' P.R. 3-1 INFRINGEMENT CONTENTIONS**

Plaintiff Fractus, S.A. ("Fractus") respectfully requests this Court to deny Defendants' Motion to Expedite Consideration of Defendants' Motion to De-Designate Plaintiff Fractus' P.R. 3-1 Infringement Contentions. The agreed Protective Order, negotiated on this very point, lays out a specific schedule and timeframe for challenging confidentiality. Dkt. No. 266 at ¶5. The Defendants' Motion to Expedite is contradictory to the agreed Protective Order in two fundamental respects.

First, under the Protective Order, the Motion belongs to Fractus, not to the Challenging Party. The Protective Order specifically states that Fractus has ten days after Defendants' April 29, 2010 certification (Dkt. No. 372) to file a motion for protective order, as calculated under the Rules. Fractus intends to file its Motion for Protective Order to keep the infringement contentions confidential by Thursday, May 13 – in accordance with the Protective Order.

Second, the Protective Order gives the Moving Party ten days to file a motion to protect confidentiality for a reason. As this Court is aware, the parties are in the midst of claim construction. Fractus's surreply on the transfer motion is due next week. And as the Defendants

know, the parties have scheduled a mediation for most of next week, with Defendants spread over three full days from May 11 - May 13 -- plus travel time and mediation preparation

Most fundamentally, the Defendants have given no reason why this Motion needs to be expedited. They claim only to do so because it “impacts Defendants’ case strategy.” Motion to Expedite at 1. This is hardly a reason to undo the Protective Order. In addition, the Defendants are moving to unseal the infringement contentions – contentions that they have had in their possession and have studied closely for six months! The Defendants do not give and cannot give any reason why there is a sudden rush in the midst of other important deadlines here. That the Defendants are now wanting to make a tactical decision is no excuse for Defendants to rush an already-quick schedule as determined by the Protective Order.

Fractus disagrees with the merits of the underlying Motion on de-designation of these Infringement Contentions, as they contain proprietary information generated by Fractus at substantial cost. Fractus intends to follow the procedure outlined in the Protective Order and file a Motion on this point. Given this procedure in the Protective Order, it makes no sense to have a faster deadline for the underlying Motion that Defendants are using to end-run the procedure in the Protective Order. For this reason alone, Fractus believes it should respond to the Defendants’ extraneous Motion at the regular deadline. Defendants have given no reason to deviate from the agreed Protective Order. To expedite a motion simply because the Defendants want a quick answer ignores the prejudice and difficulty to Fractus in rapidly briefing this Motion in the midst of other important case events and in changing who brings the Motion in the first instance.

Thus, Fractus respectfully requests that this Court deny Defendants’ Motion to Expedite Consideration of Defendants’ Motion to De-Designate Plaintiff Fractus’ P.R. 3-1 Infringement Contentions.

DATED this 6th day of May, 2010.

Respectfully submitted,

/s/ Michael F. Heim

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of FRACTUS' OPPOSITION TO DEFENDANTS' MOTION TO EXPEDITE CONSIDERATION OF DEFENDANTS' MOTION TO DESIGNATE PLAINTIFF FRACTUS' P.R. 3-1 INFRINGEMENT CONTENTIONS was served on May 6, 2010 by electronic mail to the following counsel of record:

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